

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re L.L. et al., Persons Coming Under the
Juvenile Court Law.

B209847

(Los Angeles County
Super. Ct. No. CK60785)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

GROVER S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Valerie
Skeba, Juvenile Court Referee. Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and
Appellant.

James M. Owens, Assistant County Counsel, and Jeanette Cauble, Senior Deputy
County Counsel, for Plaintiff and Respondent.

Grover S. (Father) and Teresa K. (Mother) are the parents of L.L. (L., born June 2004) and A.S. (A., born December 2005). Father has another daughter, Al.S. (Al., born March 2004) with Margarita S. Margarita and Al. are not parties to these proceedings. Father appeals from the orders of the juvenile court denying his Welfare and Institutions Code section 388¹ petition and granting the section 388 petition of the Department of Children and Family Services (Department). We affirm the juvenile court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2006, L. and A. were detained by the Department after it received three referrals alleging drug use, domestic violence, and emotional and physical abuse by Mother and Father. At the time the children were detained, Mother was living in a domestic violence shelter with the children. She moved there after Father allegedly physically abused L. and burned Mother with a cigar.

On June 5, 2006, a petition was filed pursuant to section 300, subdivisions (a), (b), and (j). The children were placed with Mother. Family maintenance services were ordered for Mother and family reunification services were ordered for Father. The Department was ordered to provide referrals to the parents for domestic violence, anger management, parenting, drug counseling, and drug testing. Pursuant to Mother's request, Father was restrained from attempting to locate Mother and the children. He was granted monitored visits which were to take place at the Department's office.

On January 30, 2007, the parties reached a settlement. L. and A. were declared dependents of the court and placed with Mother. Father's visits remained monitored and were to take place at a neutral location selected by the Department. The parents were ordered to participate in a drug rehabilitation program with random testing, parenting classes, and individual counseling to address domestic violence and anger management issues.

¹ All further statutory references are to the Welfare and Institutions Code.

On February 16, 2007, the Department filed a section 387 petition, alleging Mother had tested positive for the use of methamphetamines. The children were placed with the maternal grandmother (Grandmother).

The Department's report for Father's January 2008 section 366.22 review hearing informed the court that he had failed to complete his court-ordered programs. With Department approval, he had had unmonitored visits with the children since November 2007. The Department recommended that the court terminate Father's reunification services and allow unmonitored visits. At the hearing, Father submitted on the Department's recommendation. The juvenile court terminated Father's reunification services and ordered unmonitored visitation.²

In May 2008, Father filed a section 388 petition seeking full custody of the children or, in the alternative, five overnight visits a week. In his petition, he claimed that he had the children 80 percent of the time because he picked them up from Mother's house seven days a week and she allowed them to stay at his house overnight. He alleged Mother was using drugs, and asserted that no one could care for his children as well as he did. The court ordered a July 17 hearing on his petition.

In the report prepared for Mother's June 9, 2008 hearing on the section 387 petition, the social worker revealed that Father had made several telephonic and verbal threats to the Grandmother and the social worker. He also had called the Child Abuse Hot Line to report physical abuse by the Grandmother, but the allegations were determined to be unfounded. He told the Grandmother and the social worker he would continue to make such reports until everyone realized that he is a good father. Father called the Department's office every day, stating that the minors "must be placed in his care at this instant." When the social worker told him that he was violating the restraining order by picking the children up at Mother's house and keeping them overnight, Father responded, "I do not care[.] [T]hey are my children and they belong

² As Mother is not a party to this appeal, we do not set forth the entire history as it pertains to her. Suffice it to say that the children were returned to her, and later they were placed again with the Grandmother due to Mother's drug relapse.

with me.” The social worker also reported that Father was a regular user of medical marijuana. In her opinion, placement with Father was not in the best interests of the children since he had a history of domestic violence and appeared to have issues of control and power with women. Father had been terminated from the domestic violence program and the parenting program due to lack of compliance with policies and financial terms. On May 14, 2008, Father was arrested for burglary and theft. Both minors appeared to be functioning well and were emotionally stable with their Grandmother.

On June 12, 2008, the Department filed an ex parte petition pursuant to section 385 seeking monitored visits for Father. The juvenile court deemed it a section 388 petition and set a July 14, 2008 hearing for both petitions.

In a report prepared for the July 14, 2008 hearings, the social worker noted that L. and A. appeared to be thriving with their Grandmother. The Grandmother transferred them to a new school closer to her home. She reported to the social worker that when she told Father the children had changed schools, Father threatened to “cut her throat.”

At the hearing on July 14, 2008, Father testified that he had completed a parenting class and consistently visited his children. He had been granted full custody of A1., and in November 2007, he moved back into his home with her. He said the home had beds and a room for the girls to share, and the girls were going to the same school. He testified that he also had “a change in attitude with my marijuana smoking,” and that fact combined with the home he had ready for the children and his custody of A1. established a change in circumstances.

On cross-examination, Father admitted that he had temporary custody of A1. until a hearing scheduled for the next day. He acknowledged he had not completed the domestic violence program. He denied threatening the Grandmother when she enrolled the children in another school. He admitted he told her that changing schools would be “child abuse” because the three girls would not be able to see each other. He conceded that he previously had said he was willing to be violent for his kids, but claimed he now recognized such an approach was inappropriate. He claimed that the Grandmother had a conflict with him, and he did not have a conflict with her. He alleged she had prevented

him from visiting the children and had made false reports about him. He had to call the police on several occasions about her lack of cooperation and the school staff had gotten involved in helping him pick up the children. He did not think the Grandmother was taking good care of the children. He complained that she did not have enough energy and that A. always had rashes.

No one else testified at the hearing. Counsel for A. and L. and counsel for Mother joined with the Department's position.

The court stated, *inter alia*, "I don't believe there's changed circumstances. I don't really see that there's much, if any, change. But at best, it would be a situation of changing circumstances. But what I'm more concerned about is Father's temper. And it appears to me that it's rather explosive. He has a lot of trouble managing his anger. And the problem is that these are very young children. The problem with this type of explosive anger is that I don't think Father has control. And when he doesn't have control, I think he could lash out and hurt the children or the grandmother. And that's a situation that can be very dangerous. It's very detrimental for children to be around this type of anger. It can really have a negative effect on them. And even if they are not the victims, if somebody that they love is being targeted, it's just as detrimental to them. So I think Father needs to address anger management issues. I think [Mother's counsel is] right. [Father] gets angry when people don't do what [he] says. . . . So I don't believe there's a sufficient change in circumstances to warrant either returning the children to him or to warrant further reunification services. I'm not suggesting that I will not consider liberalizing his visits in the future. I certainly will if I believe he's addressing the anger management issues. But right now is not the time to do that. So I believe the Department has met its burden with respect to either a 388 or 385, whatever you want to call it, and Father has not met his burden. So I will make the visits monitored."

The court also stated, with respect to Al.'s case: "To be perfectly honest, I was the one who made the Father's visits unmonitored up in Lancaster. Clearly the information that we had today is different than what we had then. At that time, he seemed to be more or less in compliance, and we didn't have the issues we have today. So that ruling on

[A1.] in no way prevents me from ruling differently on this case. The situation is much different.”

The court denied Father’s section 388 petition and granted the Department’s petition, ordering monitored visits for Father and sibling visits.

DISCUSSION

“Section 388 permits a parent to petition the court on the basis of a change of circumstances or new evidence for a hearing to change, modify or set aside a previous order in the dependency. The parent bears the burden of showing both a change of circumstance exists and that the proposed change is in the child’s best interests.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) We review the denial of a section 388 petition for abuse of discretion. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310; *In re Aaron R.* (2005) 130 Cal.App.4th 697, 705.)

Father did not meet his burden of showing a change of circumstances. In his petition, he claimed that he was caring for the children on a regular basis and that Mother was using drugs. He testified that he had a “change in attitude” about his drug use but did not represent that he was drug free or had recently been tested. The social worker’s report revealed that he had not completed parenting or domestic violence programs and that he still had severe anger management problems. He failed to show that he had addressed the issues which led to the court’s intervention.

Father argues that because he was awarded full custody of A1., there is evidence that he should have unmonitored visitation with L. and A. He finds it significant that the same juvenile court referee handled the case involving A1. and the instant matter.

Initially, we note that at the hearing on July 14th, Father admitted he only had a temporary order granting him custody of Al., which was to expire the next day. He did not present any documents at the hearing to verify his claims of permanent custody.³

Next, the court took into account Father's alleged custody of Al. when it denied Father's petition. The court made it clear that there were several recent events which bore negatively on Father's fitness to care for L. and A.—his recent arrest and his threats towards the Grandmother and the social worker. As the court explained, those were not factors in the decision when it previously awarded unmonitored visits with Al.

Based on the fact that Father failed to establish a change of circumstances and exhibited an ongoing problem with anger management, the court did not abuse its discretion when it denied Father's petition and ordered monitored visitation.

DISPOSITION

The orders of the juvenile court denying Father's section 388 petition and granting the Department's section 388 petition are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P.J.

WILLHITE, J.

³ We denied Father's request to take judicial notice of the dependency proceedings of Al.